



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-01-233-54945 Office: Vermont Service Center

Date: JAN 14 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

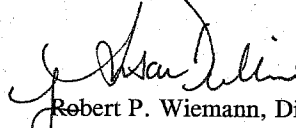
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an eviction, moving, and storage services business with 7 full-time employees a gross annual income of \$1,759,000. It seeks to employ the beneficiary as a computer programmer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had not demonstrated that the duties of the proffered position were so specialized or complex as to require a baccalaureate degree in a specific specialty.

On appeal, counsel states that the director's decision was based on incorrect information. In support of his statement, counsel submits a letter from the petitioner's president, [REDACTED] states that the petitioner, Galil Moving & Storage, Inc., has recently begun to specialize in a new service providing moving and storage services to banks during an eviction of a foreclosed

property. Ms. Levine explains that, because the company's current software is designed strictly for residential moving and storage and there is no software on the market suitable to the petitioner's current needs, the petitioner wishes to employ the beneficiary to create computer software specifically designed for eviction moving and storage.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary's] duties will include creating and implementing an REO services program specifically designed to meet our current and future needs and to be used by our group of vendors. The job will expand to include continuous program updates as well as training programs to be used by all levels of field staff.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position of computer programmer would normally require a baccalaureate degree in a specific specialty. Positions in the computer industry are not clearly defined, in part, due to the

relative sophistication and fast growth of the industry. Generally, positions in that industry are considered to fall within several groups: engineers (who may design the actual hardware used in computer systems); systems analysts (who may determine the needs of a process, select equipment, plan processing methods, and prepare specifications for programmers); and programmers (who, in turn, write instructions or programs for technicians).

The Service has found that the positions of systems engineer (and related engineering positions including designer), pure systems analyst, and programmer of computers used for scientific or engineering applications are considered to be specialty occupations, as contemplated by section 101(a)(32) of the Act. The positions of programmer of computers used for business applications and technician, on the other hand, normally require training commonly gained and widely available outside of college or university studies. They are, therefore, usually not considered to be specialty occupations. (See the sections of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, on electrical and electronics engineers, computer systems analysts, computer programmers, and computer service technicians.)

A review of the Handbook at page 115 finds that while a baccalaureate degree is usually required, a degree in a specific specialty does not appear to be a requirement. The Handbook states:

Employers using computers for scientific and engineering applications usually prefer college graduates who have degrees in computer or information science, mathematics, engineering or the physical sciences. Employers who use computers for business applications prefer to hire people who have had college courses in information systems. . . and business and who possess strong programming skills.

The petitioner has not shown why a position that does not require a baccalaureate degree in a specific specialty should be considered a specialty occupation. Additionally, the petitioner has not established that the proffered position is of such complexity that a baccalaureate degree in a specific specialty is necessary for the successful completion of its duties.

The petitioner's statement that it wishes to employ the beneficiary to create a new software program suitable for eviction and moving services is acknowledged. However, since the position itself (computer programmer for business applications) does not meet the statutory definition of a specialty occupation, the petitioner's statement on appeal does not demonstrate that a baccalaureate degree in computer programming or a related field is normally the minimum requirement for entry into the occupation.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as computer programming or a related field for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a baccalaureate degree in a specific specialty in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.